

**General Terms and Conditions (GTC)**  
**AQIPA GMBH (AQIPA)**

**§ 1**  
**SCOPE OF APPLICATION**

- 1.1 These General Terms and Conditions of Sale and Delivery (GTC) apply to all sales transactions between AQIPA and its business partner. AQIPA does not accept any terms and conditions of the commercial partner that are contrary or deviating from these GTC, unless AQIPA has expressly agreed to their validity in writing. Deviations from these GTC can only be agreed in writing.
- 1.2 These GTC also apply to all future business transactions until the release of new GTC by AQIPA, even if they do not comply with these GTC.

**§ 2**  
**ORDER, DELIVERY, TRANSFER OF RISK**

- 2.1 Offers from AQIPA are subject to change. The contracts concerning the orders of the business partner shall only come into existence with the dispatch of a written order confirmation or with the delivery of goods by AQIPA. The business partner is bound to orders for ten days from receipt of the order by AQIPA. An interim sale by AQIPA is reserved. The dimensions, weights, illustrations, descriptions, and the like stated in the catalogs, brochures and other documents of AQIPA or on the Internet are only approximate; all information is provided without guarantee. We reserve the right to make changes to the goods ordered by the business partner, which are due to the improvement of technology or to legal requirements (in particular the law and jurisdiction), during the delivery period, provided these changes are reasonable for the business partner. AQIPA is not obligated to inform the business partner about any changes outside of the written order confirmation.
- 2.2 If the order confirmation deviates from the order of the business partner, the business partner shall object in writing without delay, but at the latest within seven calendar days from receipt of the order confirmation. Otherwise, the contract shall be concluded on the terms and conditions stated in the order confirmation.
- 2.3 Unless expressly agreed otherwise, the goods shall be deemed to have been sold "ex works" (EXW). AQIPA shall make the goods available at its own discretion at its headquarters in A-6250 Kundl or at one of its branches or associated companies or deliver from the named locations.

- 2.4 Unless expressly agreed otherwise, shipment shall be on account and at the risk of the business partner. This also applies to the transfer of risk if AQIPA exceptionally assumes the costs of transport. Unless otherwise agreed, AQIPA determines the means of transport and the route of transport. Partial deliveries by AQIPA are permitted.
- 2.5 If the goods are shipped and unless agreed otherwise, the risk shall pass to the business partner as soon as the shipment has been handed over to the person carrying out the transport. If it is agreed that the goods are to be collected by the business partner, the risk is transferred to the business partner with the actual handover of the goods or the expiry of the agreed collection period or collection date. If the shipment is delayed at the request of the business partner, the risk shall pass to the business partner with the notification of readiness for shipment.
- 2.6 Delivery periods indicated by AQIPA are always subject to change and will be adhered to as far as possible. If the observance of a bindingly agreed delivery period is not possible due to circumstances beyond AQIPA's control, for example in case of force majeure, natural disasters, war, riot, in case of official orders, energy shortage or industrial action at AQIPA or its suppliers, the delivery period shall be interrupted for the duration of this circumstance and the elimination of the resulting operational consequences. Should the circumstances last longer than three months, each party of the contract shall be entitled to withdraw from the contract with respect to the part not yet fulfilled.
- 2.7 If a binding delivery period has been agreed upon for the delivery by AQIPA, then in case of exceeding the period, default shall only occur after a reminder has been sent and a grace period of at least four weeks has expired without result. The business partner shall only be entitled to withdraw from the contract or to claim damages after the occurrence of the delay and after fruitless expiration of a further reasonable grace period set by AQIPA.

- 2.8 Unless otherwise expressly agreed in writing, the delivery period begins at the latest of the following dates:
- a) date of order confirmation;
  - b) date of fulfilment of all technical, business and financial requirements for the business partner;
  - c) Date on which AQIPA receives a down payment to be made prior to delivery of the goods and/or a letter of credit to be issued is opened.
- 2.9 Deliveries of goods to business partners and/or places of delivery outside the European Union shall only be made on the basis of separate agreements.

### **§ 3 PRICES**

- 3.1 The prices to be paid by the business partner result from the respectively valid price list of AQIPA. All prices are exclusive of value added tax. All prices are subject to change until the day of the conclusion of the contract according to 2.1. and apply net from the place of delivery or dispatch named by AQIPA in the order confirmation. Not included in the price quotations are in particular freight, packaging, transport insurance and value added tax, which shall be charged additionally.
- 3.2 Changes of the producer prices/work prices/list prices of AQIPA's suppliers entitle AQIPA to corresponding changes of the prices also after conclusion of the contract or order, as long as the expected delivery period is more than three months from conclusion of the contract.
- 3.3 AQIPA reserves the right, especially also in permanent business relations, to make the acceptance of orders dependent on minimum order values or to charge surcharges for small quantities.
- 3.4 Any agreed special services, such as the attachment of advertising material of the business partner or special packaging, shall be invoiced additionally.
- 3.5 In case of agreed prices, which are exposed to the currency risk of foreign currencies, Aqipa is entitled to the relevant daily exchange rate (Euro reference rates of the European Central Bank). The amount due is to be corrected in such a way that Aqipa has no damage.

## **§ 4 PAYMENT**

- 4.1 Payments shall be made in due time, if these have been received by AQIPA in cash on the due date or on the last day of the payment period or have been irrevocably credited to their account.
- 4.2 The business partner shall automatically and without reminder be in default of payment upon expiry of the payment period.
- 4.3 If the business partner is in default with a payment, AQIPA is entitled to
- a) claim reminder fees in the amount of EUR 40.00 net for each reminder
  - b) charge all costs incurred for enforcement steps by third parties (legal fees or costs of collection agencies) in accordance with the statutory regulations,
  - c) credit payments to cover accrued costs, then to cover accrued interest on arrears and then to the oldest debt (any payment dedications by the business partner are hereby agreed as irrelevant),
  - d) claim without prejudice further damages caused by delay, to claim default interest in the legal amount (this interest rate shall be set higher if AQIPA itself can prove to have been burdened with a higher interest rate),
  - e) make use of a reasonable extension of the delivery period, whereby the period of default of payment shall in any case be a reasonable extension period (this provision shall apply to cases in which the delivery period would have commenced prior to receipt of full payment on the basis of an agreement to this effect; for the basic commencement of the delivery period, see § 2.8)
  - f) withhold further deliveries,
  - g) make, in the event of agreed payment in several purchase price instalments, the entire remaining purchase price due (loss of deadline)
  - h) withdraw from the contract and assert any claims for compensation in the event of failure to comply with a reasonable grace period.
- 4.4 AQIPA is free to charge the business partner with all costs incurred in connection with the outstanding liability.
- 4.5 The set-off and retention of payments due to possible counterclaims shall only be admissible with claims of the business partner recognized by AQIPA or legally established claims of the business partner as well as in the case of insolvency of AQIPA.

## **§ 5 WARRANTY**

- 5.1 The business partner must inspect the goods immediately upon receipt. AQIPA has to be informed immediately in writing about recognizable defects. Defects, which cannot be detected even with careful examination or which only become apparent later, shall be notified to AQIPA in writing immediately after their detection. The business partner bears the risk of receipt of the notice of defects. If the business partner does not comply with the examination and notification obligations according to this paragraph in due time, the goods shall be deemed to be approved and the business partner can no longer assert any claims due to the defect (in particular not from warranty, compensation for damages and error).
- 5.2 If a defect exists, AQIPA shall be entitled to subsequent performance by removal of the defect or delivery of a defect-free item (replacement). AQIPA shall have the right to choose between removal of defects and replacement delivery. The right of AQIPA to refuse the rectification of defects or replacement delivery if the legal prerequisites (see. e.g. § 932 (4) ABGB-Austrian Civil Code) are met, remains unaffected.
- 5.3 The business partner shall be entitled to dissolve the contract (redhibitory action) at his choice, unless it is a minor defect, or to demand the reduction of the purchase price if the subsequent performance fails or is impossible, if AQIPA fails to fulfil the performance within a reasonable period of time or if the performance is refused by AQIPA or culpably delayed by AQIPA.
- 5.4 The business partner shall give AQIPA the necessary time and opportunity to carry out the subsequent improvements or replacement deliveries, otherwise AQIPA shall be released from the liability for defects.
- 5.5 AQIPA may require the business partner to send the defective goods at the expense of AQIPA to an address specified by AQIPA or - at the option of AQIPA - that the business partner holds on to the goods and AQIPA or a third party commissioned by AQIPA carries out the removal of defects or the exchange directly at the business partner's premises.
- 5.6 No warranty claim shall exist for insignificant defects. Defects of a part of the delivery do not entitle the business partner to complain about the remaining delivery.

- 5.7 All claims for defects - except for those due to injury to life, body and health or due to gross negligence of AQIPA or its agents - shall become time-barred twelve months after the delivery of the goods. Warranty claims can only be made by the respective business partner. Warranty claims do not hinder the maturity of the purchase price claim.
- 5.8 Normal wear and tear of the goods shall not constitute a warranty claim. We expressly refer to the operating, usage, care and cleaning instructions that are enclosed with the goods. AQIPA does not assume any warranty or liability in case of deviating operation, use, cleaning and/or care as well as authorized changes to products by the business partner or third parties.
- 5.9 AQIPA may refuse to repair or replace the goods as long as the business partner has not fulfilled his payment obligations to the extent corresponding to the defect-free part of the delivery provided, if the defect-free part or the goods themselves is/are of interest to the business partner (e.g. in case of independent usability).
- 5.10 AQIPA does not assume any warranty for the compliance with special regulations in the country of destination.

## **§ 6 LIABILITY, DAMAGES**

- 6.1 The provisions of the Product Liability Act apply without restriction.
- 6.2 Any liability of AQIPA for possible damages shall be excluded by mutual agreement, unless AQIPA can be proven to be guilty of intent or gross negligence in case of violation of main contractual obligations. This shall not apply to claims from a guarantee or in case of personal injury. The exclusion of liability is especially valid for consequential harm caused by a defect and loss of profit, especially in case of delayed or defective delivery or non-delivery. The right of the business partner to warranty remains according to § 5 remain unaffected.
- 6.3 If the liability of AQIPA is excluded or limited, this also applies to the personal liability of the employees, representatives and vicarious agents of AQIPA.

**§ 7**  
**RESCISSION IN CASE OF BREACHES OF DUTY**

- 7.1 The business partner shall not be entitled to a right of rescission because of a performance not rendered by AQIPA or not rendered in accordance with the contract if AQIPA is not responsible for the breach of duty.
- 7.2 This shall not apply if a right of rescission of the business partner arises from special agreements (e.g. fixed-date transaction) irrespective of fault. Furthermore, this shall not apply in case of a defect of the goods; in this case the provisions of § 5 shall apply.

**§ 8**  
**RESERVATION OF TITLE**

- 8.1 The goods remain the property of AQIPA until full payment has been made. The retention of title is also valid for the carrier, to whom the goods are handed over at the request of the business partner or at the instigation of AQIPA.
- 8.2 The business partner shall be entitled to resell the goods prior to full payment only after obtaining written consent of AQIPA. The authorization to resell shall automatically lapse if the business partner is in default of payment or has suspended payments. The business partner shall not be authorized to dispose of the reserved goods other than in the aforementioned way, in particular to pledge or transfer by way of security, until full payment has been made. The business partner has to ward off third party interferences with the property of AQIPA as well as a seizure of the reserved goods. The business partner is obliged to point out the property of AQIPA. The business partner has to inform AQIPA immediately in writing.
- 8.3 AQIPA shall be entitled to demand the immediate return of the delivered but not yet fully paid goods if the business partner does not meet payment obligations punctually and completely or if insolvency proceedings are applied for or opened on the assets of the business partner as well as if the opening of insolvency proceedings is rejected due to lack of measures or if the business partner de facto stops payments or approaches creditors due to the conclusion of an out-of-court settlement.
- 8.4 In the event of resale prior to full payment of the goods (see above § 8.2), the business partner now already assigns to AQIPA the purchase price claim against the purchaser to which he is entitled as well as all claims with ancillary rights to

which he is entitled from the resale and notes this assignment in his books. The business partner shall, upon request of AQIPA, notify AQIPA of the sale of the goods to third parties for the purpose of payment to AQIPA within seven days from the request and shall provide AQIPA within the same period of time with the information and documents necessary for the assertion of its rights. AQIPA is authorized at any time to inform the third-party debtors of the assignment.

- 8.5 The withdrawal of the goods by AQIPA shall not be considered as withdrawal from the contract, unless this is separately agreed upon in writing. Even in case of taking back the goods sold under reservation of title, the right of AQIPA to claim damages for non-performance shall remain in force. Until the expiration of the retention of title, the purchaser shall be deemed to be the fiduciary custodian of the goods sold under retention of title. The rights of AQIPA resulting from the assertion of costs incurred by AQIPA from the reservation of title shall be borne by the Purchaser.

## **§ 9**

### **INTELLECTUAL PROPERTY, PROHIBITION OF IMITATION**

- 9.1 The Business Partner undertakes to distribute the goods of AQIPA exclusively under the name and trademark specified by AQIPA.
- 9.2 The business partner undertakes to refrain from imitating (duplicating) goods distributed by AQIPA in whole or in part and/or to make available to third parties imitations, whether in identical or modified form. This obligation or this prohibition of imitation applies in any case independent of whether AQIPA can refer to respective industrial property rights.
- 9.3 The Business Partner further undertakes to refrain from making changes to the goods sold by AQIPA.
- 9.4 The business partner undertakes neither to reproduce texts, sketches, drawings, pictures, photographs and other contents originating and/or used by AQIPA nor to make them available to third parties, unless they are materials clearly intended by AQIPA for general distribution (e.g. advertising catalog).



**§ 10**  
**PLACE OF JURISDICTION AND FINAL PROVISIONS**

- 10.1 Amendments, supplements and subsidiary agreements to these GTC as well as assurances of any kind must be made in writing to be effective. This also applies to the agreement to deviate from this formal requirement.
- 10.2 AQIPA stores and processes the name, address (postal address, e-mail address, telephone and possible fax number) and in case of direct debit also the account data of the business partner. Personal data of the business partner shall only be passed on to third parties to the extent necessary for the performance of this contract and within the framework of the provisions of the Data Protection Act 2000.
- 10.3 The contractual relationship between AQIPA and the business partner shall be governed by the law of the Republic of Austria to the exclusion of all bilateral and/or multilateral agreements concerning the purchase of movable goods, in particular to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) as well as the conflict of laws provisions of the International Private Law Act (IPRG) and Rome I.
- 10.4 For all disputes arising from the contractual relationship, if the business partner is an entrepreneur, a legal entity under public law or a special fund under public law, or has its residence or business headquarters outside of Austria, the court with jurisdiction over the subject matter for A-6250 Kundl, Tyrol, Austria shall have exclusive jurisdiction. However, AQIPA is also entitled to choose any other legally permissible place of jurisdiction.
- 10.5 The place of performance for deliveries and services is the registered office of AQIPA.
- 10.6 Should individual provisions of these GTC be invalid in whole or in part, the validity of the remaining provisions shall remain unaffected. In this case, a new provision will be made in place of the invalid provision, which corresponds or comes closest to the economic purpose of the invalid provision or the presumed intention of AQIPA.